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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/707,290 | 12/03/2003 | Thomas Anthony Meyers | 51373-0009 | 1289 |

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BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
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AKRON, OH 44308

EXAMINER

MAMMEN, NATHAN SCOTT

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3671

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/707,290

Applicant(s)

MEYERS ET AL.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☒ Claim(s) 20-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/28/04 02/26/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

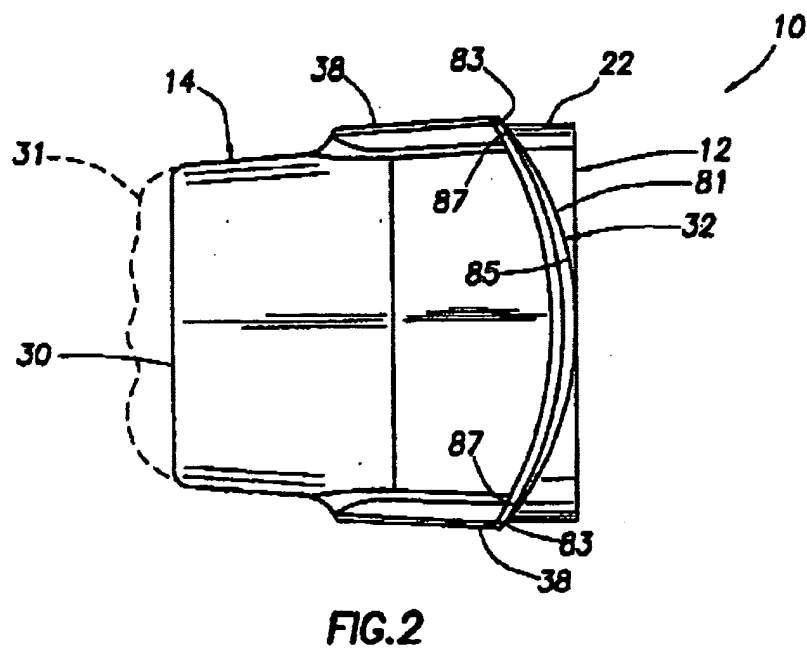
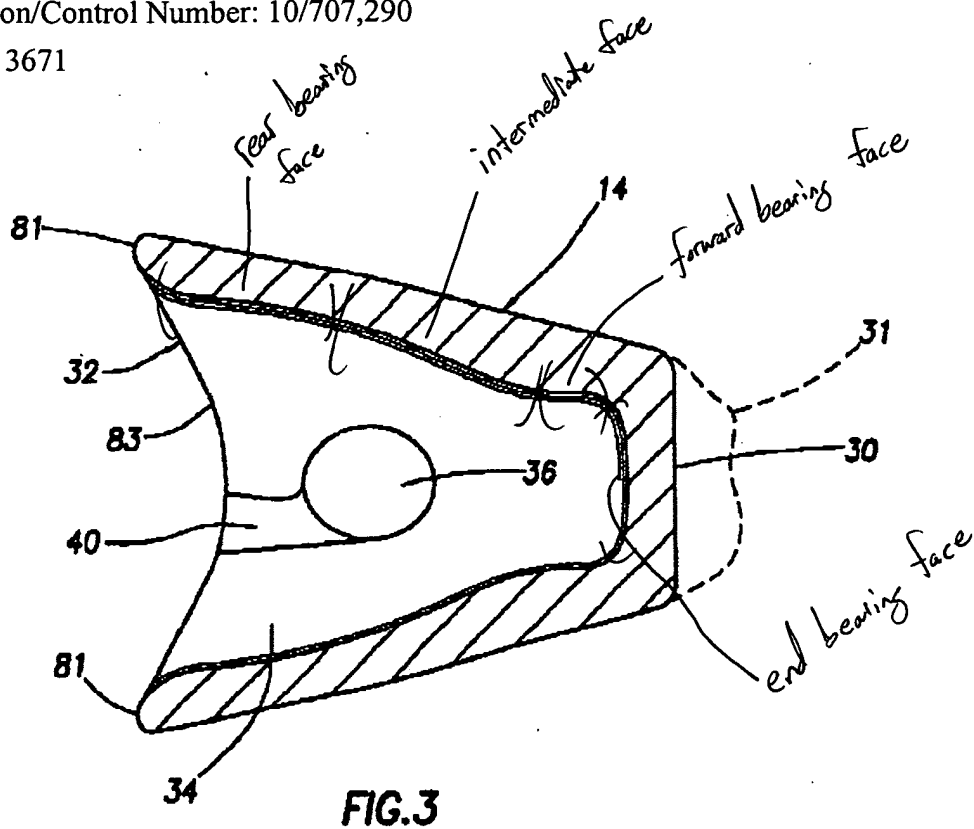
A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-7, 11-12 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,708,431 to Robinson et al.

The Robinson '431 patent discloses an excavator tooth system comprising a mounting nose (12) having a projecting spigot and a wear member (14) having at one end a socket (34). The wear member has spaced sidewalls, upper walls, and lower walls, converging from a rearwardly facing socket opening. The wear member has a forward bearing face, a rear bearing face, and an intermediate face. See Fig. 3 of Robinson, copied below. The forward and rear bearing faces are parallel to the longitudinal axis of the wear member. The front and rear bearing faces are engageable with complementary bearing faces on the spigot.

Regarding claims 2-7, 11-12: The forward end of the socket forms an end bearing face. The end bearing face extends transversely to the longitudinal axis. The wear member (13) is an adapter. The wear member includes aligned apertures (36) in opposite sidewalls of the socket. The socket opening has a transverse width greater than the forward end of the socket, and the sidewalls of the socket taper convergently towards the forward end. See Fig. 2, copied below.



Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-10, 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,708,431 to Robinson et al.

Regarding claims 8-10: The Robinson '431 patent discloses the claimed invention, as stated in paragraph 2 above, except for disclosing the relative dimensions of the rear bearing face to the forward bearing face. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the rear bearing face with a width or area greater than, or the same as, the forward bearing face, since it has been held that where the general conditions of a claim are disclosed, discovering the optimum or workable ranges involves only routine skill. See In re Aller, 105 USPQ 233 (CCPA 1955).

Regarding claims 13-19: While the Robinson '431 patent only shows the details of the subcombination, i.e., the excavator tooth system, the tooth system disclosed by Robinson is inherently a part of an excavation device, and the mounting nose would be attached to the excavation device (e.g., the lip of a bucket).

Allowable Subject Matter

5. Claims 20-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3671

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (571) 272-6991. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (571) 272-6998. The fax number for this Group is (703) 872-9306.

A handwritten signature in black ink, appearing to read 'N. Mammen', is positioned above the printed name.

**Nathan S. Mammen
Patent Examiner
Group 3600**

**NSM
6/17/05**